

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

EVA KALTER

Claim No. CU -1760

Decision No. CU - 1167

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Sheldon B. Palley, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$831.61, was presented by EVA KALTER, and is based upon the asserted loss of a bond issued by the Guantanamo and Western Railroad Company of Cuba. Claimant stated that she has been a national of the United States since her marriage to a naturalized United States citizen of June 11, 1916.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

In support of her claim, filed on April 24, 1967, claimant submitted her own statements as set forth in the claim form; two account statements issued by brokerage firms; and information regarding her asserted United States nationality. Since the evidence submitted at the time the claim was filed was not sufficient to establish a compensable claim under the Act, by Commission letter of June 19, 1967, claimant was requested to submit additional evidence, to wit: the original bonds, as well as evidence to establish the dates of purchase and the consideration paid therefor. No evidence was submitted in response to this request.

On September 7, 1967, counsel was invited to submit any evidence available to him within 45 days from that date, and he was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. Subsequently, and on November 22, 1967, counsel submitted the subject bond to the Commission.

By Commission letter of November 29, 1967, counsel for claimant was asked to submit additional information to clarify previously submitted purchase statements relating to subject bond. Furthermore, since claimant asserts derivative citizenship through her husband, counsel was requested to submit a copy of claimant's marriage certificate or other evidence to establish the date of her marriage. Although counsel was advised that this evidence and information should be submitted within 20 days from the date of the Commission's letter, no evidence or correspondence has been received either from counsel or from the claimant.

The Commission finds that claimant has not met the burden of proof in that she has failed to establish that the bond, subject of this claim, was owned by a national of the United States on the date of loss, a requirement of Section 504(a) of the Act.

Accordingly, for the reasons stated above, the Commission concludes that this claim is not one within the purview of Title V of the Act, supra, and it is denied. The Commission deems it unnecessary to make specific findings with respect to other elements of this claim.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

FEB 7 1968

Edward J. Re

Edward J. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Theodore Jaffe
Member of the Commission

This is a true and correct copy of the decision of the Commission as it was entered as the final decision on
MAR 13 - 1968

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)